named sister ships out of the writ and set aside service of the writ and warrant of arrest on the other named sister ships. However, if the plaintiff eventually obtains judgment against the defendant, he will at that stage, be able to execute the judgment against any of the property of the defendant, including his other ships, then belonging to him (see the *"Banco" supra*).

In the present case it is, in our opinion, also clearly an abuse of the process of the Court to allow the Plaintiffs to circumvent the single arrest rule under section 4(4) of the Act by naming a sister ship (whether responsible or not for the loss or damage) as different defendants in the same writ, so as to be in a position to arrest both the offending and sister ship. The Plaintiffs should have issued their writ *in rem* against the owners of the tug of vessel "Hai Hin 28" and the barge or vessel "Brunei 602" as the defendants. They could then arrest the tug or the barge as either the offending ship or the sister ship and delete the unarrested ship from the writ. If the Plaintiffs eventually succeeded in proving liability against one of the two ships or both, they could execute the judgment against any of the property of the defendants including the unarrested and other ships then belonging to the defendants.

For these reasons the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Niru & Co.; Drew & Napier.*

ROBERT TAN & ORS. v. TOMMY TAN & ANOR.

[O.C.J. (Rajah J.) February 28, 1984]
[Singapore – Civil Suit No. 84 of 1979]

Probate & Administration – Will – Transfer of shares to executor/defendant as gift – Gift perfected by transfer before death of deceased – Allegation of fraud dismissed

Shares – Transfer of – Shares valid notwithstanding not actually signed on date shown on share transfer.

The deceased, Tan Jim Lay, aged 79 died on July 19, 1974. He appointed the first defendant the sole executor and trustee of his Last Will and Testament dated June 8, 1974. It was not disputed that from 18th July until his death, the deceased was in a coma. Probate of the said Will was granted to the first defendant on May 7, 1975.

It was clear from the evidence that the deceased had, for some time prior to his death, been desirous of transferring his shareholding in the Company by way of gift to the first defendant. In pursuance of such desire, in 1973 the deceased executed a share transfer in blank in the first defendant's favour. On July 18, 1974 a resolution allowing "the transfer of 1,000 shares of $100/- each fully paid in this Company from Mr. Tan Jim Lay to Tommy Tan" was approved and signed by the directors of the Company. The Transfer was dated July 18, 1974, stamped and entered on the same day in the Register of Members of the Company.

The first, second and third plaintiffs, beneficiaries of the Will claimed that the share transfer was false as the deceased could not have signed it on July 18, 1974 as he was on that day in a state of coma and had died without regaining consciousness on 19th July. They therefore claimed that the transfer was void and sought for an order that the Company register the deceased's estate as the owner of the said 1,000 shares.

Before the action came to be tried the plaintiffs' solicitors agreed that action would not be proceeded against the second defendants on the latter's undertaking that they would abide by the Court's decision.

Held, dismissing the plaintiffs' claim: (1) it is not necessary for a share transfer to be valid for it to be actually signed on the date shown on the share transfer;

(2) the gift of the said 1,000 shares to the first defendant had, before the death of the deceased, been perfected by the transfer to him of these shares and there was nothing improper or fraudulent in such transfer.

Cases referred to:

(1) *Maynard* v. *The Consolidated Kent Collieries Corporation*, Ltd. [1903] 2 K.B. 121.
(2) *Conybear* v. *British Briquettes Ltd.* [1937] 4 All E.R. 191.
(3) *Hughes* v. *Senaor* (1869) 18 W.R. 108.
(4) *Rogers* v. *Powell* (1869) 18 W.R. 282.
(5) *Morley* v. *Finney* (1870) 18 W.R. 490.
(6) *Hill* v. *Wilson* (1873) 8 Ch. App. 888.
(7) *Whittaker* v. *Whittaker* (1882) 21 Ch. D. 657.
(8) *Finch* v. *Finch* (1883) 23 Ch. D. 267, C.A.
(9) *Coultwas* v. *Swan* (1870) 22 L.T. 539.
(10) *Coultwas* v. *Swan* (1870-1871) 19 W.R. 485 C.A.

CIVIL SUIT.

Freddy Yin for the plaintiffs.
Joseph Grimberg for the defendants.

Cur. Adv. Vult.

Rajah J.: Tan Jim Lay (the Deceased), aged 79, died on July 19, 1974 at 2.00 am having made his Last Will and Testament, dated June 8, 1974, whereby he appointed his sixth son Tommy Tan, the 1st Defendant herein, the sole executor and trustee thereof. It is not disputed that as from the 18th July until his death the Deceased was in a coma. Probate of the said Will was granted to

the 1st Defendant on May 7, 1975. Clause 2 of the Will (AB42-43) reads as follows:

"If I am still the registered owner of shares in Messrs Borden Company Private Limited, Singapore, at the date of my death I give and bequeath all such shares unto the said Tommy Tan UPON TRUST at the expiry of a period of ten (10) years computed from the date of my death to apportion my said company shares including all bonus shares (if any) into eleven (11) parts or portions and to transfer some to the following persons for their absolute use and benefit in the manner as follows:

I)	to my wife EMILY GALLOPE	.. One (1) portion
ii)	to my son JOHN TAN	.. One (1) portion
iii)	to my son ROBERT TAN	.. One (1) portion
iv)	to my son FRED TAN	.. One (1) portion
v)	to my son BONG TAN	.. One (1) portion
vi)	to my son SUNNY TAN	.. One (1) portion
vii)	to my son TOMMY TAN	.. Two (2) portions
viii)	to my daughter LORETTA (known as RITA) TAN	.. One (1) portion
ix)	to Miss HO QUI LIN alias Connie Ho (Who is at present residing in Hong Kong)	.. Two (2) portions

I direct the said Tommy Tan in the meanwhile to distribute the net income or dividends derived from my aforesaid company shares among the abovementioned in the same proportions as set out above.

I declare that if any of the aforesaid persons should die before the expiry of the said period of ten (10) years the legacy to him or her shall lapse and form part of my residuary estate to be dealt with accordingly."

It is common ground that on June 8, 1974, the date of the execution of the Will, the Deceased was the registered owner of 1,000 shares of $100/- each, fully paid in the company named in the said Clause 2 (the Company). The Company was incorporated on March 26, 1960 and the Deceased was not only one of its first six founder members but also one of its first six directors named in the Articles. Soon after the formation of the Company Tommy Tan entered its employment and has remained with it ever since. The Deceased became managing director of the Company in 1970 and remained so until his death. In January 1969 the Deceased appointed 1st Defendant his alternate director and he continued to act for the Deceased while he was out of Singapore, which was more often than not, until his death.

It is clear from the evidence that the Deceased had, for some time prior to his death, been desirous of transferring his shareholding in the Company by way of gift to the 1st Defendant and, in pursuance of such desire, some time in 1973 about a year before his death, executed a share transfer in blank in his favour. The undated blank transfer, together with a bundle of share certificates thought to cover the said 1,000 shares, were presented by the 1st Defendant to Messrs Lee Song & Company, Public Accountants, the Company's secretaries, in the person of Miss Leong, the Personal Assistant to the senior partner of the firm, on June 26, 1974 for registration. It was then discovered by her that five share certificates covering 150 of the said 1,000 shares were missing. On the same day, soon after the loss had been discovered, the Deceased sent a letter, drafted by Miss Leong, to the Company through Tommy Tan about the loss of these five share certificates and to "please arrange to do all necessary formality of remedy and to issue fresh share certificates to me in place of those lost share certificates" (AB35). The genuineness of the Deceased's signature was not challenged by the Plaintiffs. The usual notice of loss of these share certificates was then inserted in the *Straits Times* on July 3, 1974 (AB36) and, at the end of the 14 days allowed for in the notice, action was initiated by Miss Leong for the issue of duplicate share certificates in place of the lost ones.

The Company being a private one there were certain restrictions on the transfer of a member's shares. Article 28 of the Company (AB13) reads:

"A share may be transferred by a member or other person entitled to transfer to any member or any person approved by the Board of Directors, but save as aforesaid and save as provided by articles 31 and 32 hereof, no share shall be transferred to any person, who is not a member, so long as any member is willing to purchase the same at fair value."

By the following resolution in writing (prepared by Miss Leong) dated July 18, 1974, the Company resolved as follows (AB37):

"We, the undersigned being the only Directors of Borden Company Private Limited hereby sign the following Resolutions of the Board in accordance with the power provided under Article No. 89 of the Articles of Association: "That the transfer of 1,000 shares of $100/— each fully paid in this Company from Mr. Tan Jim Lay to Mr. Tommy Tan be and is hereby approved;

That the old share certificates covering the said shares be and are hereby cancelled, and

That new share certificates shall be prepared under the Common Seal of the Company for the shares thus transferred.'

Sgd: Lim Chee Hoon

Sgd: Tommy Tan
(Tan Jim Lay)
Tommy Tan alternate director

Sgd: Yeo Boon Hong

Sgd: Lim Kheng Puan

Sgd: Mdm Ong Kim Gek

Dated: 18th July 1974 "

Article 89 (AB23-24) referred to in the above Resolution reads as follows:

"The Directors or any Committee of Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meeting as they think fit, and determine the quorum necessary for the transacting of business. Until otherwise determined two shall be a quorum. Questions arising at any meeting shall be decided by a majority of votes of the Directors present each Director having one vote. In case of an equality of votes the Chairman shall have a second or casting vote. A resolution in writing signed by all Directors present in the State of Singapore and the Federation of Malaya shall be valid and effectual as if it has been passed at a meeting of Directors duly called and constituted."

On July 18, 1974 when the Resolution was signed by the signatories there were five directors of the Company and they were the Deceased, Lim Chee Hoon, Yeo Boon Hong, Lim Kheng Puan and Madam Ong Kim Gek. The 1st Defendant purported to sign the resolution as the alternate director of the Deceased but his signature was ineffective as the Deceased was then in Singapore (Article 69 of the Company). However in my view the absence of the signature of the Deceased did not affect the validity of the Resolution as he was an interested party, he being a member whose shares were being transferred under Article 28.

After the receipt by her of the Resolution Miss Leong inserted, for the purposes of stamp duty, on the otherwise completed share transfer Dollars One Hundred Thousand as the face value of the shares, dated it July 18, 1974 and sent it to the Stamp Office for stamping where it was duly stamped on the same day (Exhibit D4). With the stamped share transfer in hand Miss Leong entered on the same day in the Register of Members of the Company (Exhibit D5) the name of the 1st Defendant as the owner of the 1,000 shares previously held by the Deceased. These 1,000 shares were subsequently disclosed in the Schedule to the Estate Duty Affidavit filed in the Estate of the Deceased (AB39) as a gift to Tommy Tan (the 1st Defendant).

Three of the sons of the Deceased, namely the 1st, 2nd and 3rd Plaintiffs, beneficiaries under Clause 2 of the said Will, on seeing that the share transfer was dated July 18, 1974 came to believe that the document was false for what seemed to them the obvious reason that the Deceased could not have signed the share transfer on July 18, 1974 as he was on that day in a state of coma and had died without regaining consciousness on 19th July at approximately 3.00 a.m. This belief prompted them to sue the 1st Defendant as the executor of the last Will and testament of the Deceased and the Company (2nd Defendant) for, *inter alia,*

(1) a declaration that the transfer of the said 1,000 shares is void and for consequential orders, and

(2) for an order that the Company re-register the Deceased's estate as the owner of the said 1,000 shares.

Before the action came to be tried, the solicitors for the Plaintiffs agreed with the solicitors for the two Defendants that the action against the 2nd Defendants would not be proceeded with, the 2nd Defendants undertaking that they would abide by the decision of the Court.

At the commencement of the trial the Plaintiffs amended their Statement of Claim which put their case under four heads:

(A) that the transfer form specifically states that the 1st Defendant purchased the said 1,000 shares and if effect is to be given to the transfer form, the shares were not a gift to the 1st Defendant (paragraph 6 of the Amended Statement of Claim);

(B) that the purported transfer of the said shares was fraudulent and so was neither a sale nor a gift to the 1st Defendant (paragraph 7 of the Amended Statement of Claim);

(C) that upon the true construction of Clause 2 of the said Will and in the events which have happened, notwithstanding the testator not being the registered owner of the shares in the Company at the date of his death (which was denied) the 1st Defendant holds all such shares upon trust for the persons and in the shares set out in Clause 2 of the said Will (paragraph 8(1) of the Amended Statement of Claim);

(D) that the said transfer form was not a gift but was in fact a sale of the said shares by the testator to the 1st Defendant for the sum of $100,000/- and as such the 1st Defendant had failed to account to the estate of Tan Jim Lay, Deceased, in the sum of $100,000/- and in so doing had deprived the beneficiaries of their respective and rightful shares in the said estate (paragraph 9 of the Amended Statement of Claim).

In his final submission to the Court, Counsel

for the Plaintiffs abandoned paragraph 9 of the Amended Statement of Claim (Head D), which alleged a sale of the said 1,000 shares to the 1st Defendant, and by necessary implication para.6 of the Amended Statement of Claim (Head A) and put his clients' case in effect under Heads (B) and (C). I will now therefore deal with this case under these two Heads.

Head (B) Fraudulent Transfer – Neither Sale nor Gift (Paragraph 7 of the Amended Statement of Claim)

In the Particulars relating to the allegation of fraudulent transfer the Plaintiffs allege fraud under five counts. Under count (a) it is contended that the testator could not have signed the share transfer on the July 18, 1974 as he was in a coma on that day. However the Plaintiffs do not dispute the genuineness of the signature of the Deceased on the share transfer. On the evidence before me I find that the share transfer was signed in blank by the Deceased in 1973 and not on July 18, 1974. It is not necessary for a share transfer to be valid for it to be actually signed on the date shown on the share transfer.

Under count (b) it is contended that the Deceased before his death on or about the 6th day of July 1974 at No 40K Kim Yam Road in the presence of the 1st Defendant, the three Plaintiffs and one Tan Chong Tee (since deceased) had informed them that the said shares would be distributed as he had laid out in Clause 2 of the said Will. Even if I were to accept the 1st Plaintiff's evidence (which I don't) that the testator had on or about July 6, 1974 told the three Plaintiffs in the presence of the 1st Defendant at 40K Kim Yam Road that the shares would be distributed as the Deceased had laid out in Clause 2 of the Will, such oral statements of the Deceased cannot have any bearing on the exact terms and alter the effect of the said Clause 2. There is no evidence one way or the other that the Clause 2 of the Will was specifically mentioned by the Deceased or by any one else in the room. The truth of the matter is that on July 6, 1974 none of the members of the family knew the contents of the Will nor did Tommy Tan himself know that he had been appointed sole executor of the Deceased's Will. It was only when it was known that the Deceased had terminal cancer some three weeks before his death that active steps were taken by the 1st Defendant, at the Deceased's behest, to transfer the shares to himself under the blank share transfer signed by the Deceased and Tommy Tan.

Counts (c), (d) and (e) state that

(c) on or about the 20th of July 1974 when the Will was read out by the solicitor to all of the members of the testator's family, the 1st Defendant never raised any objections or made comments on Clause 2 of the Will;

(d) the 1st Defendant through his solicitor wrote to the Plaintiffs' solicitors stating that the shares of the said company had been transferred on the July 1, 1974;

(e) on the 3rd day of July, 1974 the Company reported the loss of the said share certificates in an advertisement published in the *Straits Times*.

None of the statements in these three counts which are factually correct to my mind suggest in any way that the transfer of the said 1,000 shares to the 1st Defendant was in any way a fraudulent transfer. I do not for a moment believe that the four directors of the Company, Miss Leong and the senior partner of the Secretaries to the Company were in conspiracy to defraud the estate of the Deceased of these 1,000 shares.

Head (C) 1st Defendant as Trustee for the Plaintiffs (Paragraph 8(1) of Amended Statement of Claim)

In support of their contention that the 1st Defendant is now holding the said 1,000 shares as their trustee for purposes of Clause 2 of the Will, the Plaintiffs say that about ten days or thereabouts before the death of the testator on July 19, 1974 but after the execution of his said Will, the Deceased at No. 40K, Kim Yam Road, Singapore summoned the Plaintiffs to his bedside. There, in the presence of the 1st Defendant and one Tan Chong Tee (since deceased), the testator told the Plaintiffs that he had arranged everything, that the 1st Defendant was to run the Company and that the profits at the end of each year including bonuses were to be distributed to all the brothers and sisters. The Deceased also informed those present that he had set all this out in his Will. To my mind the crucial point in this case is whether at the date of the death of the Deceased he was still the registered owner of shares in the Company. On the evidence before me both documentary and oral, particularly that of Miss Leong (DW 3), who to my mind was a totally honest and reliable witness, I find that the name of Tom-

my Tan was properly and without taint of fraud on the Share Register of the Company before the death of the Deceased. Having so found, the question of whether the 1st Defendant is trustee for the Plaintiffs as claimed by them does not arise.

During his closing submission Counsel for the Plaintiffs raised two matters not covered by his pleadings to which Counsel for the Defendant rightly objected. The first was that, as the share transfer was not adequately stamped, the directors of the Company should have refused registration of the transfer and Counsel cited the cases of *Maynard* v. *The Consolidated Kent Collieries Corporation, Limited*[1] and *Conybear* v. *British Briquettes Limited*[2]. Both these cases deal with the question of when directors may properly refuse to register shares. They, in my view, have no relevance to the case here. The second was in relation to donees of gifts *inter vivos* and he cited the following cases: *Hughes* v. *Seanor*[3], *Rogers* v. *Powell*[4], *Morley* v. *Finney*[5], *Hill* v. *Wilson*[6], *Whittaker* v. *Whittaker*[7], *Finch* v. *Finch*[8], *Coultwas* v. *Swan*[9] and *Coultwas* v. *Swan*[10].

These cases, to my mind, adjudicated on the kind of corroborative evidence that a donee of a gift *inter vivos* will have to produce in Court to sustain his claim upon the estate of a deceased donor. In my view they do not provide any help to the Plaintiffs in the instant case. On the contrary the position here is that the gift of the said 1,000 shares to the 1st Defendant had, before the death of the Deceased, been perfected by the transfer to him of these shares and I have held that there was nothing improper or fraudulent in such transfer.

For these reasons I have to dismiss the Plaintiffs' claims with costs. Liberty to apply.

Claim dismissed.

Solicitors: *Yin Ee Kheng & Co.; Drew & Napier.*

FALCON PROPERTIES PTE. LTD. & ANOR. v. SKY SAFETY ENGINEERING PTE. LTD. FALCON PROPERTIES PTE. LTD. & ANOR. v. AMO ASIA TUBEWELL & CONSTRUCTION

[O.C.J. (Sinnathuray J.) March 9, 1984]
[Singapore – Suit Nos. 982 of 1981 & 4568 of 1982]

Landlord & Tenant – Open sheds erected on land in 1946 – Addition of new structures – Whether present premises came within purview of the Control of Rent Act (Cap. 266)

The main issue in these two consolidated actions was whether the premises occupied by the two defendants came within the purview of the Control of Rent Act 1966.

The facts were as follows. On June 27, 1946, an application was made by the then owners of the land to erect open sheds on the land on which the premises now stand. On July 31, 1946 a Temporary Permit was issued for the open sheds. Subsequently, from July 1948 to February 1957, new structures alterations and improvements were added to the said sheds. On February 16, 1957 a Certificate of Fitness for all the structures on the land made permanent was issued.

The facts also revealed that a contract was made for the sale of the premises by the first plaintiffs to the second plaintiffs after the first plaintiffs had commenced actions against the two defendants. The sale had been completed but delivery of vacant possession of the land was withheld pending the outcome of the present actions. The latter objected to the second plaintiffs being made a party in these actions.

Held, allowing the plaintiffs' claim: (1) the shed had by 1957 shed all the attributes of the open shed. The latter had undergone such considerable change that it had lost its identity. The premises was a new building and no longer came within the purview of the Control of Rent Act 1966;

(2) the general law of landlord and tenant relating to monthly tenancies applied to the defendants and their tenancies having been terminated by a notice to quit, they were liable to pay double rent from the time the notice to quit came into effect;

(3) the second plaintiffs as successors-in-title to the land had been properly made a party to these actions under Order 15 Rule 7 of the Rules of the Supreme Court 1970. The second plaintiffs as owners of the land were therefore entitled to collect double rent as claimed by them.

CIVIL SUITS.

Karuppan Chettiar (*Miss Chay Siong Wan* with him) for the plaintiffs in both suits.

L.A.J. Smith (*Alan Wong* with him) for the defendants in both suits.

Cur. Adv. Vult.